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**IN THE UNITED STATES DISTRICT COURT
DISTRICT OF MONTANA
BILLINGS DIVISION**

JOSEPH F. KRUEGER,

Plaintiff,

vs.

TITAN MACHINERY, INC., a
Delaware Corporation; TITAN
MACHINERY, INC., d/b/a TITAN
RENTAL, a Montana Assumed
Business Name; and JOHN DOES I-
IV,

Defendants.

Cause No.

**COMPLAINT AND DEMAND
FOR JURY TRIAL**

COMES NOW the Plaintiff, by and through his counsel of record, Edwards, Frickle & Culver, and for his Complaint against the above-named Defendant, complains and alleges as follows:

JURISDICTION

1. The Plaintiff, Joseph F. Krueger, was at all times material to this action a resident of Billings, Yellowstone County, Montana.

2. At all times material to this action, Defendant, Titan Machinery, Inc., was a Delaware corporation, registered and authorized to do business within the State of Montana with its principal place of business in West Fargo, North Dakota, and was engaged in the business of agricultural, construction, and consumer product dealerships selling new and used equipment throughout the United States and Europe.

3. At all times material to this action, said Defendant operated, represented, and did business as Defendant Titan Rental, which was registered within the state of Montana under an assumed business name, in Billings, Montana, and was engaged in the business of renting various heavy-duty, shortline equipment, such as tractors and boom lifts, to the public, on behalf of Defendant Titan Machinery, Inc.

4. The true names and capacities of John Does I-IV are unknown to the Plaintiff, who therefore sues said Defendants under these fictitious names. On information and belief, Defendants John Does I-IV, inclusive, (i) directly participated in or assisted in the performance of the wrongful acts and omissions described herein, although the full extent of their involvement is unknown at this

time, OR (ii) conspired with the named parties in this case to perform the wrongful acts and omissions described below, although the full extent of their involvement is unknown at this time, OR (iii) acts as principals or agents actual or ostensible, of other named parties in this case in performing the wrongful acts and omissions described below, although the full extent of their involvement is unknown at this time. Plaintiff thus believes that Defendants John Does I-IV, inclusive, are liable for the damages and other relief sought in this case as participants, co-conspirators, principals, or agents, or are otherwise necessary or indispensable parties to adjudication of the issues involved in this case. When the true names and capacities of John Does I-IV, inclusive, have been ascertained, appropriate amendments of this Complaint will be filed.

5. Jurisdiction is vested in this Court on the principles of diversity jurisdiction, pursuant to 28 U.S.C. § 1332, and the matter in controversy exceeds, exclusive of interest and costs, the amount of Seventy-Five Thousand Dollars (\$75,000.00).

FACTUAL ALLEGATIONS AND CLAIMS

6. On or about July 8, 2011, Plaintiff had rented a JLG manlift, Model T500J (hereinafter, “Lift”), from Titan Rental, for use in finishing some tree trimming at his home.

7. As a consumer, Joe Krueger, relied upon Titan Rental to rent out the Lift in a safe, fully serviced, and fully functional manner so that no parts of the Lift would fail while he was properly operating the Lift.

8. On July 8, 2011, at approximately 7:45 p.m. Joe set the park brake and attempted to operate the Lift per the instructions, the brake on the Lift failed, which caused the entire Lift, weighing in at 4,800 lbs., to suddenly begin to roll onto Joe's left leg, causing him to sustain severe permanent injuries.

9. Work orders for the Lift confirm that the brake had a history of not functioning properly, and it was therefore rented out by Titan Rental to Joe Krueger in an unsafe manner

10. An inspection of the Lift on December 7, 2011 confirmed the brake was not working and the wheel actually spun while the brake was engaged.

COUNT ONE

(Negligence)

11. Plaintiff incorporates by reference and realleges each and every allegation set forth in the preceding paragraphs of this Complaint as though set out in full.

12. Defendants had a duty to provide Joe with a safe, well maintained, and properly functioning Lift.

13. Defendant Titan Rental, under the representation and operation of Defendant Titan Machinery, Inc., breached its duty by not properly servicing, or maintaining proper service on the Lift, causing the Lift to be unreasonably dangerous to Joe, or any other person that used the Lift.

14. Defendant Titan Rental's actions/inactions, under the representation and operation of Defendant Titan Machinery, Inc., caused and continue to cause Joe severe and permanent physical injuries including left ankle, shin, knee, and back injuries, as well as, psychological and emotional injuries. Joe has endured hospitalizations, surgeries, months of physical therapy and chiropractic treatment, and has incurred and continues to incur medical bills. He has had his established course of life, and enjoyment thereof, adversely and permanently altered by his injuries. These damages as set forth above are ongoing and permanent.

COUNT TWO

(Punitive Damages)

15. Plaintiff incorporates by reference and realleges each and every allegation set forth in the preceding paragraphs of this Complaint as though set out in full.

16. The character of the conduct of Defendant Titan Rental, under the representation and operation of Defendant Titan Machinery, Inc., in knowingly and deliberately placing the unmaintained and unserviced Lift in the channels of

commerce from which a consumer—Joe Krueger in this case—rented out the Lift, and the reliance Joe placed on Defendant Titan Rental and its Lift are conduct or misconduct on the part of Defendant Titan Rental, under the representation and operation of Defendant Titan Machinery, Inc., such that Joe Krueger is entitled, under Montana law, to punitive damages from Defendants.

WHEREFORE, Plaintiff prays judgment against Defendants for all damages to which he is entitled under Montana law, in such categories and in such amounts as will be furnished to Defendants in accordance with applicable Montana law and/or Rules of Civil Procedure, or by amendment, or proof at trial. In addition, Plaintiff is entitled to punitive or exemplary damages because of the character of Defendants' wrongful acts and/or omissions. Plaintiff leaves the precise damages as are just and proper to Plaintiff's trial jury as that jury judges all facts and circumstances presented.

DEMAND FOR JURY TRIAL

Plaintiff hereby demands a trial by jury on all such issues so triable.

DATED this 10th day of June, 2014.

EDWARDS, FRICKLE & CULVER

By /s/ A. Christopher Edwards
A. Clifford Edwards
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Attorneys for Plaintiff